

BEFORE THE BOARD OF PERSONNEL APPEALS

OF THE STATE OF MONTANA

DEPARTMENT OF AGRICULTURE)
Employer,)
MONTANA PUBLIC EMPLOYEES ASSOCIATION)
Petitioner.)

40-6-1975

ORDER

* * * * *

The Board of Personnel Appeals having heard testimony at its August 7, 1975 meeting from the Department of Agriculture and the Montana Public Employees Association regarding the exemption of Gerald M. Kaiser, Inspector, Horticulture Supervisor and Ned Johnson, Compliance Officer III, from bargaining unit activities hereby Orders as follows:

1. That Gerald M. Kaiser, Inspector, Horticulture Supervisor, does have the authority to effectively recommend hiring and firing of personnel under his jurisdiction and is therefore exempt from the bargaining unit.
2. That Ned Johnson does have the authority to effectively recommend hiring and firing of employees under his jurisdiction, and is therefore exempt from bargaining unit activities.

BOARD OF PERSONNEL APPEALS

BY

Robert R. Jensen
Robert R. Jensen
Executive Secretary

Dated this 20th day of August, 1975.

CERTIFICATE OF MAILING

I, Robert R. Jensen, hereby certify and state that I did, on the 20th day of August, 1975, mail a true and correct copy of the above Order, in an envelope securely sealed with postage prepaid, addressed to them at their last known address as follows:

George Lackman
Department of Agriculture
Capitol Annex
Helena, Montana 59601

Tom Schneider
M.P.E.A.
P. O. Box 1184
Helena, Montana 59601

Dated this 20th day of August, 1975.

Robert R. Jensen
ROBERT R. JENSEN

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BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT DETERMINATION NO. 6 (1975) *

MONTANA PUBLIC EMPLOYEES ASSOCIATION,,

Petitioner,

DEPARTMENT OF AGRICULTURE,

Employer - Counterpetitioner,)

) FINDINGS OF FACT,
) CONCLUSIONS OF
) LAW, AND ORDER
) AS RECOMMENDED
) TO THE BOARD OF
) PERSONNEL APPEALS

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I. INTRODUCTION

The Montana Public Employees Association (hereafter, MPEA) filed a Petition for Unit Determination and Election with the Board of Personnel Appeals on April 7, 1975. MPEA proposes a bargaining unit consisting of "All non-exempted employees of the Department of Agriculture, State of Montana."

The Department of Agriculture (hereafter Department) filed a counterpetition with the Board of Personnel Appeals on April 14, 1975. The counterpetition detailed (1) the Department's agreement with the petitioners proposed unit structure, and (2) the employees the Department feel should be exempted from the bargaining unit under section 59-1602 (3), (4), which exempts "supervisory employees" and "management officials". The counterpetition was amended at the unit determination hearing. As amended the counterpetition proposes the exclusion of twenty (20) employees of the Department.

A hearing was held in this matter before me, as the duly appointed hearing examiner of the Board, on May 20, 1975, in Helena Montana. The Department was represented at the hearing by Commissioner George Lackman and Deputy Director Eldon R. Fastrup; MPEA was represented at the hearing by Thomas E. Schneider.

II. FINDINGS OF FACT

1. The parties are in substantial agreement as to what would constitute an appropriate bargaining unit in this matter. The record indicates that there is but one issue remaining to be resolved; that is, whether or not certain employees are excluded from collective bargaining representation.

2. As noted above, the Department submitted an amended counterpetition

1 at the hearing which listed the personnel the Department believes should be
2 excluded from any appropriate bargaining unit. Of the twenty employees listed
3 in the amended counterpetition, the parties here are in substantial agreement
4 as to the exclusion of twelve employees; the remaining eight will be discussed
5 below.

6 (A) It is my opinion that, for the reasons outlined, these employees
7 should be excluded from the appropriate bargaining unit:

8 Inspector, Pesticide Supervisor, (Robert H. LaRue); and Chemist Supervisor,
9 (Laszlo Torma). These two employees possess the supervisory and managerial
10 responsibilities detailed in sections 59-1602(3) and (4), R.C.M. 1947. The
11 Inspector, Pesticide Supervisor supervises up to six full-time employees, and
12 has administrative responsibilities over the "pesticide program" and the
13 "licenses program". The Chemist Supervisor supervises four full-time employees
14 and up to six part-time employees. The Chemist Supervisor's recommendations,
15 relative to the supervisory functions detailed in section 59-1602(3) R.C.M.
16 1947, are effective; no laboratory positions are filled without his approval.

17 (B) It is my opinion that, for the reasons outlined, these employees
18 should be included in the appropriate bargaining unit:

19 Secretary, Administrative I, (Doretta Deveny); and Accountant III, (Mary
20 Evans). The Department seeks to exclude these positions from any appropriate
21 unit because of the "confidential" nature of their relationship with management.
22 The Montana Public Employees Collective Bargaining Act (Title 59, Chapter 16,
23 R.C.M. 1947) does not provide for the exclusion of "confidential employees".
24 Therefore, it is my opinion that these employees are not excludable from any
25 appropriate unit on the basis of confidentiality,

26 Inspector, Horticulture Supervisor, (Gerald Kaiser); Compliance Officer III,
27 (Ned Johnson); Inspector, Horticulture III, (Clayton Scott); and, Grader, Agricultural
28 Commodity Supervisor, (Lawrence Vigen). The record in this case indicates
29 that while the Inspector, Horticulture Supervisor and the Grader, Agricultural
30 Commodity Supervisor perform a few supervisory functions, they do not possess
31 the extent of authority required for exclusion under section 59-1602(3) R.C.M.
32 1947. The organizational structure, as explained by the Department, indicates

1 that there are at least three levels of supervision above the Compliance
2 Officer III and Inspector, Horticulture III: 1) Commissioner of Agriculture,
3 2) Horticulture Division Administrator and 3) Inspector, Horticulture Sup-
4 ervisor. Moreover, while these four positions may direct subordinates, and
5 assign tasks to subordinates, the record shows that they do not have the
6 authority to hire and discharge subordinates, or to effectively recommend
7 such action.

8 III CONCLUSIONS OF LAW

9 A unit composed of all non-exempt employees of the Department of Agricul-
10 ture, State of Montana, as proposed by the Montana Public Employees Association,
11 is appropriate for the purposes of collective bargaining within the meaning
12 of section 59-1606 (2), R.C.M. 1947.

13 IV RECOMMENDED ORDER

14 An election by secret ballot shall be conducted under the direction and
15 supervision of the Board of Personnel Appeals, among the employees described
16 in the Conclusion of Law, above, who were employed by the Department of Agric-
17 ulture on April 7, 1975, to determine whether or not they desire to be repres-
18 ented, for purposes of collective bargaining, by the MPEA.

19 Dated this 17th day of June, 1975.

20
21 George H. Massman
22 GEORGE H. MASSMAN
23 HEARING EXAMINER
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CERTIFICATE OF MAILING

I, GEORGE H. MASSMAN, hereby certify and state that I did, on the 17th day of June, 1975, mail a true and correct copy of the Findings of Fact, Conclusions of Law and Order as Recommended to the Board of Personnel Appeals in the matter of Unit Determination No. 6 (1975), by depositing a true and correct copy in the United States mail, in an envelope securely sealed with postage prepaid, addressed to them at their last known address as follows:

George Lackman, Director
Department of Agriculture
Capitol Annex Building
Helena, Mt 59601

Eldon Fastrup, Deputy Director
Department of Agriculture
Capitol Annex Building
Helena, Mt 59601

Thomas E. Schneider,
Executive Director
Montana Public Employees Association
P. O. Box 1184
Helena, Mt 59601

Dated this 17th day of June, 1975.


George H. Massman